

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JENNIFER STRANGE, MAGEN MORRIS, on
behalf of themselves and all other similarly
situated,

Plaintiffs,

v.

LES SCHWAB TIRE CENTERS OF
WASHINGTON, INC., LES SCHWAB
WAREHOUSE CENTER, INC.,

Defendants.

NO. CV 06-0045RSM

LES SCHWAB DEFENDANTS' ANSWER
TO SECOND AMENDED COMPLAINT

I. ANSWER

Defendants Les Schwab Tire Centers of Washington, Inc., and Les Schwab Warehouse Centers, Inc. ("Defendants") answer plaintiffs' Second Amended Complaint ("Second Amended Complaint") as follows:

1.1 The allegations in this paragraph are admitted.

1.2 The allegations in this paragraph are admitted.

1.3 The allegations in this paragraph are admitted.

1.4 In response to the first sentence of this paragraph, Defendants admit that plaintiffs purport to have asserted claims under Title VII of the Civil Rights Act of 1964. The second sentence states a legal conclusion and is therefore denied.

1.5 Defendants deny the allegations in the first sentence of this paragraph. The second sentence states a legal conclusion and is therefore denied.

1.6 This paragraph states a legal conclusion and is therefore denied.

2.1 Defendants admit the allegations in this paragraph.

2.2 Defendants admit the allegations in this paragraph.

2.3 Defendants deny the allegations in this paragraph.

3.1 Defendants deny any discrimination against plaintiffs or any other women based on gender, deny that any of the requirements of Rule 23 of the Federal Rules of Civil Procedure are or can be met, note that the Court has twice denied plaintiffs' motion for class certification, and deny any other allegations in this paragraph.

3.2 Defendants deny the allegations in this paragraph.

3.3 Defendants deny the allegations in this paragraph.

3.4 Defendants deny the allegations in this paragraph.

3.5 Defendants deny the allegations in this paragraph.

3.6 Defendants deny the allegations in this paragraph.

4.1 Defendants admit that Les Schwab Tire Centers of Washington, Inc., operates 103 tire stores under the name Les Schwab Tire Centers in Washington. Defendants deny that Les Schwab Warehouse Center, Inc., operates (or operated, during the relevant time period) any tire stores in any state. Defendants deny any remaining allegations in this paragraph.

4.2 Defendants admit that each of their retail tire stores has a Manager, that each store typically has one or two Assistant Managers, and that each store also has employees in a position entitled "Sales and Administration" and a position entitled "Sales and Service," among other positions. Defendants further admit that the Sales and Administration position encompasses,

1 among other things, office and clerical work, and the Sales and Service position encompasses tire
 2 sales, tire installation, and related physical work on automobiles, trucks, farm machinery, and
 3 other vehicles and equipment. Defendants deny that Les Schwab Warehouse Center, Inc.,
 4 employs (or employed, during the relevant time period) any employees in any of these
 5 enumerated positions. Defendants deny any remaining allegations in this paragraph.
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 11 4.3 Defendants admit that some entity known as Les Schwab Tire Centers has been in
 12 business for more than 50 years and deny any remaining allegations in the first sentence of this
 13 paragraph. Defendants deny any remaining allegations in this paragraph.
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16
 17 4.4 Defendants admit that the positions of Assistant Manager and Manager require
 18 extensive prior experience in the Sales and Service position, and that all promotions to the
 19 positions of Assistant Manager and Manager are made from within. Defendants deny any
 20 remaining allegations of this paragraph.
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 25 4.5 Defendants deny the allegations in this paragraph.
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27 4.6 Defendants deny the allegations in this paragraph.
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29 5.1 As to the first sentence of this paragraph, Defendants admit that plaintiffs Strange
 30 and Morris filed charges with the EEOC and state that the charges speak for themselves and are
 31 the best evidence of their contents. Defendants admit the allegations in the second sentence.
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 33 The third sentence states a legal conclusion and is therefore denied.
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36
 37 6.1 Defendants incorporate their responses to paragraphs 1.1 through 5.1 of the
 38 Second Amended Complaint.
 39

40
 41 6.2 This paragraph requires no response.
 42

43 6.3 Defendants deny the allegations in this paragraph.
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45 6.4 Defendants deny the allegations in this paragraph.
 46

47 6.5 Defendants deny the allegations in the first sentence of this paragraph. The
 48 allegations in the second sentence require no response.
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1 7.1 Defendants incorporate their responses to paragraphs 1.1 through 6.5 of the
2
3 Second Amended Complaint.

4 7.2 This paragraph requires no response.

5 7.3 Defendants deny the allegations in this paragraph.

6 7.4 Defendants deny the allegations in this paragraph.

7 7.5 Defendants deny the allegations in the first sentence of this paragraph. The
8
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10 allegations in the second sentence require no response.

11 8.1 Defendants incorporate their responses to paragraphs 1.1 through 7.5 of the
12
13 Second Amended Complaint.

14 8.2 This paragraph require no response.

15 8.3 Defendants deny the allegations in this paragraph.

16 8.4 Defendants deny the allegations in this paragraph and note, specifically, that the
17
18 Court has twice denied plaintiffs' motion for class certification and that the Court's Order on
19
20 Pending Motions (Dkt. #106, at 3, lines 17-19) contemplates that plaintiffs' Second Amended
21
22 Complaint would delete this "pattern and practice" claim.

23 8.5 Defendants deny the allegations in this paragraph.

24 8.6 This paragraph requires no response.

25 9.1 Defendants incorporate their responses to paragraphs 1.1 through 8.6 of the
26
27 Second Amended Complaint.

28 9.2 This paragraph requires no response.

29 9.3 Defendants admit that Jennifer Strange was formerly employed by a Les Schwab
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31 Tire Center in the State of Washington. Defendants deny the remaining allegations in this
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33 paragraph.

34 9.4 Defendants admit that Magen Morris was formerly employed by one, or more,
35
36 Les Schwab Tire Center in the State of Washington. Defendants deny the remaining allegations
37
38 in this paragraph.

1 9.5 Defendants deny the allegations in this paragraph.

2 9.6 Defendants deny the allegations in this paragraph.

3 9.7 Defendants deny the allegations in this paragraph.

4 9.8 Defendants deny the allegations in this paragraph.

5 9.9 This paragraph requires no response.

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11 10.1-8 Defendants deny that the class or classes alleged by Plaintiffs exist or that any of
12 the requirements of Rule 23 of the Federal Rules of Civil Procedure are or can be satisfied.
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14 Defendants further deny that Plaintiffs are entitled to any of the relief requested in these
15 paragraphs or to any other relief, and deny any remaining allegations in these paragraphs.
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18 11.1 Any allegations not expressly admitted herein are denied.

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21 **II. DEFENSES AND AFFIRMATIVE DEFENSES**

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23 By way of further answer, Defendants state the following defenses and affirmative
24 defenses:
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26 1. Plaintiffs (hereinafter inclusive of all purported class members, except as
27 otherwise indicated) fail to state a claim upon which relief may be granted.

28
29 2. Plaintiffs lack standing to raise some or all of the claims of the purported class
30 members.
31

32 3. Plaintiffs' claims on behalf of the purported class are barred by plaintiffs' failure
33 to meet all four of the mandatory requirements of Fed. R. Civ. P. 23(a), or any of the
34 requirements of Fed. R. Civ. P. 23(b).
35

36 4. The claims alleged by the named plaintiffs are neither common nor typical of
37 those, if any, of the members of the purported class.
38

39 5. The named plaintiffs are inadequate representatives of the purported class.

40 6. The types of claims alleged by plaintiffs are matters in which individual questions
41 predominate and, accordingly, are not appropriate for class treatment.
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1 7. Plaintiffs have failed to identify a pattern or practice of discrimination against
2 plaintiffs.
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4 8. The employment actions taken by Defendants with respect to the plaintiffs were
5 based upon legitimate, non-discriminatory factors other than gender.
6

7 9. Defendants deny that gender or any other impermissible factor played any role in
8 any employment decision made pursuant to any policy or procedure plaintiffs are or may be
9 challenging.
10

11 10. Plaintiffs' claims are barred to the extent that the alleged unlawful actions of
12 Defendants' agents, employees and representatives, if they occurred, were not actions taken
13 within the course and scope of their employment.
14

15 11. Plaintiffs' claims for punitive damages are barred under Washington law.
16

17 12. Plaintiffs have failed to comply with their duty to mitigate alleged losses (their
18 entitlement to recovery for which is expressly denied); alternatively, any claim for relief must be
19 set off and/or reduced by wages, compensation, pay and benefits, or other earnings or
20 remunerations, profits and benefits received by plaintiffs.
21

22 13. In the event that the Court or a jury should ever conclude that gender was a
23 motivating factor in any of the employment decisions challenged by plaintiffs, which Defendants
24 expressly deny, Defendants affirmatively aver that the same decisions would have been made
25 absent consideration of any impermissible factor(s).
26

27 14. Plaintiffs' claims, or some of them, are barred by applicable statutes of limitation.
28

29 15. Plaintiffs' claims are barred by the doctrines of estoppel and waiver.
30

31 16. Plaintiffs' claims are barred, in whole or part, by their failure to undertake
32 reasonable measures to avoid alleged consequences of the alleged actions about which they
33 complain.
34

35 WHEREFORE, having fully answered the Second Amended Complaint, Defendants
36 respectfully request that:
37

- 1 1. The Second Amended Complaint be dismissed with prejudice;
- 2
- 3 2. Defendants be awarded the costs, disbursements and attorneys' fees they incur
- 4
- 5 herein;
- 6
- 7 3. Defendants be granted permission to amend the Answer to conform with the
- 8
- 9 proof; and
- 10
- 11 4. Defendants be granted such other relief as this Court deems just and equitable.
- 12

13 DATED this 3rd day of December 2008.

14
15 s/ Jeffrey A. Hollingsworth

16 Jeffrey A. Hollingsworth, WSBA #11853

17 Charles N. Eberhardt, WSBA #18019

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34
35
36 Attorneys for Defendants

CERTIFICATE OF SERVICE

On December 3rd, 2008, I caused to be served upon counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the foregoing document:

Defendants' Answer to Second Amended Complaint

Mr. John F. Stanley	—	Via hand delivery
Mr. Damien A. Lee	—	Via U.S. Mail, 1st Class,
U.S. Equal Employment Opportunity Commission		Postage Prepaid
Seattle District Office	—	Via Overnight Delivery
Federal Office Building, Suite 400	—	Via Facsimile
909 First Avenue	<u>X</u>	Via E-filing
Seattle, WA 98104-1061		

Attorneys for Plaintiff EEOC

Mr. Warren E. Martin		
Gordon, Thomas, Honeywell,	—	Via hand delivery
Malanca, Peterson & Daheim LLP	—	Via U.S. Mail, 1st Class,
Suite 2100, One Union Square		Postage Prepaid
600 University Street	—	Via Overnight Delivery
Seattle, WA 98101	—	Via Facsimile
	<u>X</u>	Via E-filing

Attorney for Plaintiffs Strange & Morris

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at Seattle, Washington, December 3rd, 2008.

s/Jeffrey A. Hollingsworth

State Bar Number: 11853

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